SECTION I
REMARKS

Regarding the Amendments

No amendments have been made to the claims by the present Response. Accordingly, the claims remain as submitted in the preliminary amendment filed January 6, 2005. Thus, upon entry of the present Response, claims 1-14 will be pending, of which claims 4-14 are withdrawn.

Rejection of Claims 4-14 Under 35 U.S.C. §102

The examiner has rejected claims 1-3 under 35 U.S.C. §102 as anticipated by Sung et al. Applicants respectfully disagree.

In rejecting the claims, the examiner quoted 35 U.S.C. § 102(a), but the stated rejection is under 35 U.S.C. § 102(e). It is respectfully submitted that the cited Sung et al. reference is not available as a prior art reference under either 35 U.S.C. § 102(a) or (e).

The examiner has cited a reference by Sung et al., with publication numbers WO 2003/0104064 and WO 02/55671. It is unclear what publication number WO 2003/0104064 refers to, as a search in esp@cenet does not yield any results for this number. It appears that this number refers to the US publication number of the application. The following argument is based on the assumption that the citation by the examiner was intended to be WO 02/55671 and US 2003/0104064.

35 U.S.C. § 102 provides:

> A person shall be entitled to a patent unless -
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or...
>
> (e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United

> States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language...

However,

> [w]hen subject matter, disclosed but not claimed in a patent or application publication filed jointly by S and another, is claimed in a later application filed by S, the joint patent or application publication is a valid reference >under 35 U.S.C. 102(a) or (e)< unless overcome by affidavit or declaration under 37 CFR 1.131 or an unequivocal declaration under 37 CFR 1.132 by S that he/she conceived or invented the subject matter disclosed in the patent or application publication and relied on in the rejection. In re DeBaun, 687 F.2d 459, 214 USPQ 933 (CCPA 1982). (MPEP §§ 715.01, 716.10, emphasis added.)

It is respectfully submitted that the portion of the teachings of the Sung et al. reference that relate to the pending claims were conceived of and invented by the applicants of the present application, as set forth in the attached declaration under 37 C.F.R. § 1.132.

The examiner's attention is respectfully drawn to the attached declaration. As can be seen in the declaration, the Sung et al. reference and the present application contain five inventors in common. In paragraph 7 of the declaration it is stated that "[t]he method for preparing PGA from *Bacillus subtillis var. chunkookjang*(KCTC 0697BP) having a molecular weight of more than 2,000 kDa, as described in Sung et al....originated with or was obtained from Moon-Hee Sung, Seung-Pyo Hong, Jae Jun Song, Kenji Soda and Makoto Ashiuchi." In paragraph 8 of the declaration, it is stated that "the method for preparing PGA as described in #7 above, and as disclosed in Sung et al...was conceived by Moon-Hee Sung, Seung-Pyo Hong, Jae Jun Song, Kenji Soda and Makoto Ashiuchi..." As such, the unclaimed subject matter of the Sung et al. reference is shown to be an invention conceived of by the inventors of the present application, and the subject matter of the Sung et al. reference was derived from, originated with, or was obtained from applicants. Such a showing that the invention is attributable to applicant is sufficient to overcome rejections under either 35 U.S.C. § 102(a) or (e).

Accordingly, citation of the Sung et al. reference under either 35 U.S.C. § 102(a) or (e) is overcome. Withdrawal of the rejection of claims 1-3 under 35 U.S.C. § 102 (a) or (e) as being anticipated by Sung et al. is therefore respectfully requested.

CONCLUSION

Based on the foregoing, all of Applicants' pending claims 1-3 are patentably distinguished over the art, and are in form and condition for allowance. The Examiner is requested to favorably consider the foregoing and to responsively issue a Notice of Allowance.

The time for responding to the October 29, 2007 Office Action without extension was set at three months, or January 29, 2008. Applicants hereby request a two (2) month extension of time under 37 C.F.R. § 1.136 to extend the deadline for response to and including March 29, 2008. Payment of the extension fee of $230.00 specified in 37 C.F.R. § 1.17(a)(2), as applicable to small entity, is authorized by the enclosed Credit Card Payment Form PTO-2038. Should any additional fees be required or an overpayment of fees made, please debit or credit our Deposit Account No. 08-3284, as necessary.

If any issues require further resolution, the Examiner is requested to contact the undersigned attorney at (919) 419-9350 to discuss same.

Respectfully submitted,

Date: 3/31/08

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Enclosures:
Credit Card Form PTO-2038 [1 pg.]
Declaration Under 37 C.F.R. §1.132 [3 pgs.]

The USPTO is hereby authorized to charge any deficiency or credit any overpayment of fees properly payable for this document to Deposit Account No. 08-3284

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